

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR 10 2008

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ANTONIO A. ACEDO,

Appellant.

)
)
) 2 CA-CR 2007-0183
) DEPARTMENT B
)

MEMORANDUM DECISION

) Not for Publication
) Rule 111, Rules of
) the Supreme Court
)

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200600658

Honorable Stephen M. Desens, Judge

AFFIRMED

Harriette Levitt

Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement, appellant Antonio Acedo was convicted of burglary, a class four felony. In January 2007, the trial court suspended the imposition of sentence and placed Acedo on four years' probation. The state filed a petition to revoke probation and an amended petition in April 2007. After a violation hearing, the trial court

found the allegations in the amended petition to revoke had been proven. The court subsequently revoked probation and sentenced Acedo to the presumptive prison term of 2.5 years. This appeal followed.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Acedo has not filed a supplemental brief. As requested and pursuant to our obligation under *Anders*, we have reviewed the entire record for fundamental error. The evidence presented at the violation hearing established by a preponderance that Acedo had violated conditions of probation as alleged in the amended petition to revoke. *See* Ariz. R. Crim. P. 27.8(b)(3) (probation violation subject to preponderance of evidence standard). On or about January 8, 2007, Acedo failed to report to the probation department as the court had directed. On or about January 29, he changed his residence without the supervising probation officer's permission. On or about February 7, he did not report to the supervising probation officer.¹ And on or about April 17, he left the state, indeed, he left the country, without the supervising probation officer's permission.

¹We note that the probation officer testified Acedo did go to the probation office that day as the two of them had agreed earlier, but he left and did not return. Because the purpose of the meeting was "an office interview," the probation officer concluded Acedo had violated a condition of probation. Even assuming *arguendo* the evidence fell short of establishing the alleged violation had occurred and that the error in the court's finding to the contrary was fundamental, it was not prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). The outcome of the case would have been no different. *See State v. Ojeda*, 159 Ariz. 560, 562, 769 P.2d 1006, 1008 (1989).

¶3 In determining the appropriate disposition, the trial court considered all relevant circumstances before choosing to revoke probation, a decision that was well within the court’s discretion. *See generally* A.R.S. § 13-901(C) (“court, in its discretion . . . may revoke probation”); *see also State v. Crowder*, 103 Ariz. 264, 265, 440 P.2d 29, 30 (1968); *State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973). The court then imposed the statutorily prescribed, presumptive prison term for the offense of burglary, a class four felony. *See* A.R.S. § 13-701(C)(3).

¶4 We have found no error in this record that can be characterized as fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 20, 26, 115 P.3d 601, 607-08 (2005). We therefore affirm the court’s orders finding Acedo had violated probation, revoking his probation, and sentencing him to the 2.5-year prison term.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge